BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LARRY DEAN BLASOR Claimant	)	
VS.	)	
SCHNEIDER NATIONAL INC. Respondent	)	Docket No. **1,035,906**
AND	)	
LIBERTY MUTUAL INSURANCE Insurance Carrier	)	

ORDER

Respondent and insurance carrier request review of the October 26, 2007 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

ISSUES

The claimant alleged he was injured in Tennessee. The primary issue raised at the preliminary hearing was whether there is jurisdiction under the Kansas Workers Compensation Act for this accidental injury that occurred out of state.

The Administrative Law Judge (ALJ) found claimant's contract of employment was made in Kansas which conferred jurisdiction under the Kansas Workers Compensation Act.

The respondent requests review of whether the ALJ erred in finding that the contract of employment was made in Kansas and that Kansas has jurisdiction. Respondent argues claimant asked to go to work for respondent which request was accepted by respondent in Wisconsin. Claimant was required to complete orientation as well as pass drug and driving tests which were performed in Texas. As the last acts necessary to form the contract were completed in Texas respondent further argues Kansas does not have jurisdiction.

Claimant argues he accepted the employment offer from his home in Kansas and therefore the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant, an over-the-road truck driver, submitted an application for such employment with respondent. The application was made on-line from his home computer on April 25, 2007. On May 9, 2007, claimant received a call from Pamela Lardinois, a driver recruiting representative for respondent. Ms. Lardinois conducted claimant's telephone interview which claimant successfully completed. Ms. Lardinois termed the offer conditional. Conversely, claimant did not recall the term conditional being used. But claimant told respondent that he needed to give his employer a two-week notice. On May 25, 2007, claimant contacted respondent and withdrew from the process as he decided to stay with his employer.

On June 13, 2007, from his home in Cherryvale, Kansas, claimant telephoned Ms. Lardinois to see if his application was still open.[1] Ms. Lardinois indicated that his application was still active and again provided claimant with a conditional job offer subject to record checks with the Department of Transportation, a DOT physical; passing a drug screen; a driving test and orientation.

Orientation was scheduled for June 23, 2007, and respondent made all of the arrangements. A rental car was provided to Nathan Capps, who was from Missouri and also going to Dallas, Texas for orientation, and he picked the claimant up at his home in Cherryvale, Kansas. They traveled to Dallas, Texas for the orientation training. Respondent paid for claimant's breakfast and lodging at a Comfort Inn motel but claimant paid for his evening meal. Claimant testified the orientation included paperwork, a road test, a physical lifting test, as well as walking and climbing up on equipment. Upon successful completion of the orientation procedure and various tests the claimant was considered by respondent to have a hired date of June 27, 2007.

On June 28, 2007, respondent provided claimant a rental car to take to West Memphis, Arkansas, to retrieve a truck. Next, claimant was to pick up an empty trailer in Memphis, Tennessee, and then go to Mississippi to get a load. On Saturday, June 30, 2007, claimant was driving down Interstate 55 in Memphis when his air seat slammed against the floor really hard. Claimant noticed on Sunday that he had some back pain and then on Monday, July 2, 2007, he could not move at all. By this time he had reached Gary, Indiana.

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[1] Claimant agreed that at a discovery deposition in October 2007 he had testified that when he called Ms. Lardinois the second time he had used his cell phone and he did not know where he was when he made the call.

Claimant notified the respondent by satellite computer and respondent had to call an ambulance in order to get him out of the truck. Claimant was transported to Methodist Mercy Hospital's emergency room in Merrillville, Indiana. X-rays were taken and claimant was given injections of a painkiller and a muscle relaxant. He was to be off work the next couple of days and respondent provided him a motel. On July 5, 2007, claimant returned home by bus and was advised to seek medical treatment with his personal physician.

Claimant sought treatment with Dr. Kathleen Williams in Independence, Kansas. Dr. Williams ordered an MRI which was performed in Bartlesville, Oklahoma. The MRI revealed a broad-based annular disk bulge with a small superimposed central disk protrusion at L1-2 as well as disk degenerative changes in the lumbar spine with a board-based annular disk bulge at L5-S1. Dr. Williams prescribed physical therapy and a pain therapist. By the time the results were received, claimant had been terminated by respondent on July 9, 2007.

The initial issue to address is whether there is jurisdiction under the Kansas Workers Compensation Act.

It is undisputed claimant's alleged accidental injury occurred in Tennessee. The Kansas Workers Compensation Act confers jurisdiction in some cases where the injury is sustained outside the state. The two provisions that confer Kansas jurisdiction are (1) if the principal place of employment is within the state, or (2) the contract of employment was made within the state, unless the contract specifically provides otherwise.[2]

K.S.A. 44-506 provides:

> The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

[2] *Abbey v. Cleveland Inspection Services, Inc.*, 30 Kan. App. 2d 114, 41 P.3d 297 (2002).

Claimant does not argue nor do the facts establish that his principal place of business was to be Kansas. Accordingly, the dispositive issue is whether the claimant's contract of employment was made in Kansas.

In *Shehane*[3], the Court held:

> The basic principle is that a contract is "made" when and where the last act necessary for its formation is done. *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975). When that act is the acceptance of an offer during a telephone conversation, the contract is "made" where the acceptor speaks his or her acceptance. *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, Syl. ¶ 1, 512 P.2d 438 (1973).

In this case the claimant initially accepted a conditional job offer on May 9, 2007, from his home in Kansas. Although claimant could not recall whether the word conditional was used, he did agree that he was told he would have to complete a driving test as well as a drug screen. And he further agreed he understood that if he did not successfully complete the tests he could not drive a truck for respondent. Claimant testified:

> Q. And you were interviewed over the phone?
>
> A. Yes, sir.
>
> Q. And she gave you a conditional job offer at that time?
>
> A. She never said it was conditional that I recall.
>
> Q. She tell you you have to go through a driving test down in Texas?
>
> A. Yes.
>
> Q. She tell you you have to have a drug screen down in Texas?
>
> A. Yes.
>
> Q. That all had to occur before they were going to let you in a truck, is that right?
>
> A. Yes.[4]

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[3] *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 261, 3 P.3d 551 (2000).

[4] P.H. Trans. 24-25.

But claimant later informed respondent that he had changed his mind and was going to stay with his employer. Claimant again changed his mind and made a second call to respondent to inform them he wanted to work for them and to see if the offer was still open. Claimant told respondent he wanted to go to work and they said okay. Claimant testified:

> Q. Okay, just so I understand kind of how that conversation went, you contacted them?
>
> A. Yes.
>
> Q. You told them you wanted to go to work for Schneider?
>
> A. Um-hum.
>
> Q. They said okay?
>
> A. That's what I recall sir, yes.
>
> Q. Then they sent you the fax down to tell you where to go in Texas, is that right?
>
> A. Yes.
>
> Q. So you offered to go to work for them and they said fine?
>
> A. Yes, sir, that's what I recall.[5]

Arguably respondent accepted claimant's offer to work for respondent and that offer was accepted by Ms. Lardinois in Wisconsin. In any event, claimant agreed that he knew he had to complete both the driver's test as well as the drug screen before he would be allowed to drive a truck for respondent. And both those tests were administered in Texas.

In *Speer*[6] the Court of Appeals analyzed a similar factual situation and determined that the requirements to pass driving tests, drug screening and orientation were conditions precedent and had to be successfully completed before the employment contract was completed.

> Different from the facts of *Shehane*, there is no written contract here indicating that the drug test, orientation, and other required paperwork were conditions subsequent to Speer's employment with Sammons. Moreover, it is apparent that Sammons would not have given Speer the keys to one of its trucks unless Speer had first satisfied these conditions. Speer admitted in his deposition testimony that passing

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[5] *Id*. 26-27.

[6] *Speer v. Sammons Trucking*, 35 Kan. App. 2d 132, 128 P.3d 984 (2006).

> the drug test was a condition that he had to meet before he would be hired. One might characterize Sammons' offer to Speer as follows: Sammons says to Speer, "Speer, if you will take and pass a drug test, complete orientation, fill out and sign required paperwork, Sammons will hire you." The taking and passing of the drug test and completing the other conditions must exist as a fact before there is any liability on Sammons to hire Speer. This was a condition precedent rather than a condition subsequent. Black's Law Dictionary 312 (8th ed.2004) defines a condition precedent as "[a]n act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises." Even if Sammons' representative Otis communicated a counteroffer to Speer during the telephone conversations, this counteroffer had conditions precedent that were not fulfilled until Speer completed the drug test, orientation, and paperwork while he was in Montana.
>
> In summary, the satisfaction of these conditions was a prerequisite to the employment contract coming into existence.[7]

In the second phone call the respondent accepted claimant's offer to go to work. This was acceptance of the original conditional offer that claimant complete a driving test, a drug screen and orientation. All of those requirements were performed and completed in Texas. Accordingly, the last acts necessary to form or complete the contract occurred in Texas. This Board Member finds that the determination by the ALJ that the Kansas Workers Compensation Act applies to this fact situation is reversed and claimant's request for benefits denied.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[8] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[9]

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Thomas Klein dated October 26, 2007, is reversed and claimant's request for benefits is denied.

IT IS SO ORDERED.

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[7] *Id.* at 144-145.

[8] K.S.A. 44-534a.

[9] K.S.A. 2006 Supp. 44-555c(k).

Dated this _____ day of January 2008.

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DAVID A. SHUFELT
BOARD MEMBER

c: Angela Trimble, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge